

**AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO**

**COMBINED HEAT AND POWER, INCORPORATED
a subsidiary of Industrial Power Generating Corporation
Registration No. 51201**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Combined Heat and Power, Incorporated, a subsidiary of Industrial Power Generating Corporation (INGENCO) for the purpose of resolving certain alleged violations of environmental laws and or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.
6. "INGENCO" means Industrial Power Generating Corporation, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the power generating facility which is owned and operated by Combined Heat and Power, Inc., a subsidiary of INGENCO, located at 2361 Lanier Road in Goochland County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means the Construct and Operate Permit, which became effective May 30, 2000.
10. "CH&P" means Combined Heat and Power, Incorporated.

SECTION C: Findings of Fact and Conclusions of Law

1. INGENCO owns and operates Combined Heat and Power, Inc., which owns and operates a power generating facility in Goochland County, Virginia. The Facility is the subject of the Construct and Operate permit issued on May 30, 2000.
2. PRO issued a Notice of Violation on March 24, 2003, subsequent to a file review and initial performance testing conducted on October 22, 2002, which documented the following alleged non compliance conditions with the Permit.
 - CH&P's permit issued May 30, 2000, authorized the construction and operation of 24 distillate oil fired internal combustion engines. On June 26, 2000, CH&P notified DEQ-PRO that "the construction of the 24 new generators commenced on May 1, 2000." This is a potential violation of 9 VAC 5-80-10 C.1.a – which prohibits beginning actual construction, reconstruction or modification of any stationary source without first obtaining a permit to construct and operate or to modify and operate.
 - The May 30, 2000, permit required an initial performance test for Oxides of Nitrogen (NOx) and Carbon Monoxide (CO) to be performed 60 days from achieving maximum capacity but in no case later than 180 days from start-up. On June 26, 2000, a letter from Combined Heat & Power, Inc. states: "The 24 new generators start-up date was June 1, 2000, as scheduled." CH&P performed their initial performance tests on October 25, 2001 (NOx) and December 13, 2001 (NOx and CO). DEQ staff observed these tests and by letter dated August 5, 2002, documented several deviations from the test methods outlined in the test protocol submitted to DEQ. Also in this letter DEQ informed CH&P that due to the test method deviations, DEQ could not accept the initial performance testing and required the tests to be performed again. CH&P performed the required test

on October 22, 2002. The initial performance test dates are beyond the 180 day time frame specified in the May 30, 2000 permit. This is a potential violation of 9 VAC 5-50-30 and 9 VAC 5-80-10 J.

- Condition 19 of the May 30, 2000, permit limits CO emissions from any individual new Detroit Diesel Series 6063-GU160 internal combustion engine at 0.14 gr/bhp-hr and 0.20 gr/kW-hr respectively. The initial performance test conducted on October 22, 2002 documented CO emissions from individual engines at 0.18 gr/bhp-hr and 0.26 gr/kW-hr. This is a potential violation of 9 VAC 5-50-260 and 9 VAC 5-50-180.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders INGENCO, and INGENCO voluntarily agrees, to perform the actions described in Appendix A of this Order and to pay a civil charge of eleven thousand four hundred dollars (\$11,400.00) within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Payment shall include the Federal Tax Identification Number of the facility.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of INGENCO, for good cause shown by INGENCO, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to INGENCO by DEQ on March 24, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, past, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, INGENCO admits the jurisdictional allegations, and neither admits or denies the factual findings and conclusions of law contained herein.
4. INGENCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. INGENCO declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. INGENCO shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO, shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.Failure to so notify the Regional Director within seven days of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and INGENCO . Notwithstanding the foregoing, INGENCO agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to INGENCO Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INGENCO, from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, INGENCO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____ 2003.

Robert G. Burnley, Director
Department of Environmental Quality

INGENCO voluntarily agrees to the issuance of this Order.

By: _____
Charles J. Packard
President
Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2003, by _____, who is _____ (name) _____ of INGENCO, on behalf of the Corporation. _____ (title)

Notary Public

My commission expires: _____

APPENDIX A

INGENCO shall:

1. Submit, within thirty (30) days of the execution of this Order, a facility wide New Source Review permit application and a revised Title V permit application.
2. INGENCO shall respond within the time frame specified in any disapproval, conditional approval, deficiency notice or other responsive comment(s) other than outright approval from DEQ on or concerning the New Source Review permit application and/or revised Title V permit application. Failure to respond within the specified time frame shall constitute a violation of this Order.